

## REMARKS

Reconsideration and allowance in view of the foregoing amendments and the following remarks are respectfully requested. Claims 1-26 are pending in this application.

### Rejection Under § 112, First Paragraph

Claims 1-26 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner contends that the introductory phrase "In combination:" used in each of the claims makes it unclear as to whether a package is being claimed or a product. The applicants respectfully traverse the rejection. A package and a product stored in said package are being claimed in combination. Thus, the applicants respectfully contend that the introductory phrase "In combination:" is appropriate and would reasonably apprise one of ordinary skill in the art of the scope of the invention claimed, as is required by § 112. Accordingly, withdrawal of the rejections under 35 U.S.C. § 112, second paragraph, is respectfully requested.

### Prior Art Rejections

Claims 1-12 and 17-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Christoff, U.S. Patent No. 4,617,683. The applicants respectfully traverse the rejection with respect to independent claim 1.

To promote consumer acceptance, it is desirable that the reclosable package of the present invention be openable in substantially the same manner as is a conventional snack food package lacking the reclosability feature. Conventional snack food (e.g., chips) packages are typically opened by the consumer grasping the front and back walls of the package at a location below a top seal and pulling the front and rear walls away from each other thereby causing the sealed top

of the package to open by delamination progressing from inside the package (i.e., the product side of the seal) to the outer edge of the seal.

Furthermore, for the reclosable package containing a snack food product of the present invention, it is desirable that the reclosable feature (i.e., the zipper) be closed during shipment, storage, display, etc. of the package with the snack food product sealed therein so as to avoid snack food crumbs from becoming lodged in the zipper thereby interfering with subsequent functioning of the zipper. Therefore, to foster consumer acceptance of the reclosable package, it is desirable that the package, which is both sealed and zippered closed, be openable by a consumer using the same pinch-grip pulling procedure that the consumer would use on a snack food package that does not include the reclosable zipper.

In the invention recited in claim 1 in which the first and second engagement members of the first and second zipper parts, respectively, are engaged together and in which a front wall and a rear wall of the package are sealed together at a top seal, the top seal is manually pinch-grip openable and the first and second engagement members are manually pinch-grip openable "under a pinch-grip pulling force applied to said front and rear walls below said engagement members." The cited reference, Christoff '683, specifically teaches that the bag is opened by pulling the seal 42 at the top end of the bag open or by severing the top end of the bag along a line between the seal and the reclosable fastener [see Figure 3] and then using the side wall portions located outwardly (i.e., above, see Figure 3) from the fastener 27 as pull flanges for pulling the closed fastener open when desired. See column 6, lines 35-41. This is different from the invention recited in claim 1 in which the top seal and the engagement members are pinch-grip openable

under a pinch-grip pulling force applied to the front and rear walls below the engagement members. Christoff '683 does not disclose nor does it suggest a reclosable package wherein both the top seal and the interengaged zipper portions are substantially simultaneously openable by application of a pinch-grip pulling force applied below both the zipper and the top seal. Thus, Christoff '683 does not render obvious the invention of claim 1. Accordingly, claim 1 and all claims dependent therefrom are allowable over Christoff '683 and withdrawal of the rejection of claims 1-12 is respectfully requested.

With respect to independent claim 17, that claim has been amended to recite that the seal and the inner sealable layers are openable by delamination and the engagement between the engagement members of the zipper are disengaged upon the application of a predetermined pinch-grip pulling force applied to each of said front and rear walls below said zipper. For the reasons discussed above with respect to claim 1, the invention of claim 17 is not disclosed nor suggested by Christoff '683. Thus, claim 17 and all claims depending therefrom are allowable over Christoff '683 and withdrawal of the rejection of claims 17-22 is respectfully requested.

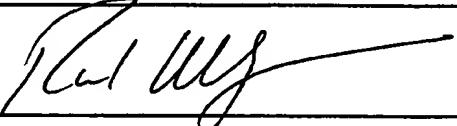
Claims 13-16 and claims 23-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Christoff '683 as applied to independent claims 1 and 17 in view of Thompson et al., U.S. Patent No. 5,224,779. Claims 13-16 and 23-26 are believed to be allowable as being dependent upon allowable base claims, there being nothing in the teachings of Thompson '779 to overcome the deficiencies of Christoff '683 with respect to the inventions of claims 1 and 17. Specifically, there is nothing in Thompson '779 that would disclose or suggest a package and product combination wherein the package has a top seal and interengaged members of a zipper

are openable by application of a pinch-grip pulling force applied below both the zipper and the top seal. Therefore, withdrawal of the rejections of claim 13-16 and 23-26 is respectfully requested.

Comments Regarding Purportedly Pertinent Prior Art

In paragraph 8 of the detailed action, the Examiner indicates that Tomic, U.S. Patent No. 6,131,248, and Johnson, U.S. Patent No. 6,065,872, are considered pertinent to the applicants' disclosure and are made of record. The applicants respectfully contend that neither of these references are proper prior art as against this application. The filing date of Tomic '248 is March 13, 1998, and the Rule 131 declaration filed by the applicants in response to the last Office Action (May 10, 2000) overcame the Ramsey reference (U.S. Patent No. 6,030,122) having a filing date of March 6, 1998. Thus, as Applicants have established an invention date predating March 6, 1998, the patent to Tomic having a filing date of March 13, 1998 is not a proper prior art reference against this application. With respect to Johnson '872, that patent has a filing date of February 4, 1999. The priority date of the present application is May 15, 1998. Thus, Johnson '872 postdates Applicants' priority date and therefore should not be cited against this application.

All objections and rejections having been addressed, it is respectfully submitted that the application is now in condition for allowance and a notice to that effect is earnestly requested.

RESPECTFULLY SUBMITTED,					
NAME AND REG. NUMBER	Richard Wydeven, Registration No. 39,881				
SIGNATURE				DATE	1/29/01
ADDRESS	Rothwell, Figg, Ernst & Manbeck, P.C. 555 Thirteenth Street, N.W., Suite 701, East Tower				
CITY	Washington	STATE	D.C.	ZIP CODE	20004
COUNTRY	U.S.A.	TELEPHONE	202-783-6040	FAX	202-783-6031

Attachment: Marked-Up Copy of Amendments

NDATACLIENTS0914DIV014-372.AMD

**Amended Claim 17: Version with markings to show changes made**

17. (Twice Amended) In combination:

a) a flexible package, including

front and rear walls, said front and rear walls being laminated plastic walls including at least one inner sealable layer and at least one outer wall layer, a bottom seal formed between lower sides of said front and rear walls; a top seal formed between upper sides of said front and rear walls, said top seal including a seal between said inner sealable layers; a zipper located within said package proximate said top seal, said zipper having a first zipper part having a first engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base; said zipper also having a second zipper part having a second engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base; said first engagement member being engaged with said second engagement member;

said at least two points of sealant on said first zipper part being sealed to said inner layer of one of said front and rear walls and said at least two points of sealant on said second zipper part being sealed to said inner layer of the other of said front and rear walls;

said seal between said inner sealable layers being openable by de-lamination and said engagement between said engagement members of said zipper being disengaged upon the application of a predetermined pinch-grip pulling force applied to each of ~~said front and rear walls below said zipper~~; and

b) food product stored within said package between said closed zipper and said bottom seal.